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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,235	08/13/2001	Stephen F. Gass	SDT 314	8810

27630 7590 04/20/2006

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EXAMINER

ALIE, GHASSEM

ART UNIT PAPER NUMBER

3724

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action Before the Filing of an Appeal Brief	Application No. 09/929,235	Applicant(s) GASS ET AL.	
	Examiner Ghassem Alie	Art Unit 3724	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04/12/06 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.


Allan N. Shoap
Supervisory Patent Examiner
Group 3700

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: Applicant's amendment after final failed on 04/10/06 raises new issues that require further consideration and search. For example, new independent claim 34, in contrast to claim 15, does not include means-plus-function limitations.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed on 04/10/06 have been fully considered but they are not persuasive.

Applicant's argument that the finality of the Office Action mailed on 02/14/06 has to be withdrawn is not persuasive. Applicant alleged that the Examiner introduced a new ground of rejection because claim 13 was not amended in any way to necessitated the new ground of rejection in the Final Office action mailed on 02/14/06. Claim 13 was amended on 06/08/05 in repose to the Non-Final Office action mailed on 12/14/04. The amendment to claim 13 as well of amendments to other claims necessitated a new ground of rejection. For example, claim 13 was amended to call for "a detection system adapted to detect a dangerous condition between a user and the cutter"; instead of " a detection system adapted to detect contact between a user and the cutter" which was recited in the original claim 13. Clearly, there are many differences between the phrase "contact" and the phrase "a dangerous condition." In the first rejection of claim 13, the Examiner had to relay only on the references that teach a contact between a person and a cutter. However, in the second rejection, since the word "contact" was eliminated from claim 13, the Examiner had to rely also on other references that do not teach a contact between a person and a cutter and they do teach a dangerous condition between a person and a cutter. Therefore, the new ground of rejection was clearly necessitated by applicant amendment to claim 13.

Applicant's argument that the obviousness-type double patenting rejection of claim 15 in light of claim 12 of patent 6,094,004 should be withdrawn is persuasive. It should be noted that double patenting rejection of claim 15 is withdrawn, since ,in this case, the two way test obviousness cannot be applied. Claim 12 in the US patent 6,944,004 cannot be rejected by claim 15 of the instant application.